Supreme Court, U.S.
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No. 10- 10-561

IN THE

Supreme Court of the United States

SAMUEL Y. SUNG and YOUNG HEE SUNG, as husband and wife; MORNING STAR WORLD MISSION,

Petitioners,

v.

TAE T. CHOI; INMIN KIM and MYUNG SOON HILLTON, as representatives of the NEW HOPE CHRISTIAN REFORMED CHURCH OF TACOMA, f/k/a NEW HOPE CHRISTIAN REFORMED CHURCH; and REVEREND TIMOTHY TOWSET, as representative of the CLASSIS PACIFICNORTHWEST OF THE CHRISTIAN REFORMED CHURCH OF NORTH AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Establishment Clause of the First Amendment, courts may not become entangled in ecclesiastical matters. However, courts attempting to resolve church property disputes using this Court's compulsory deference doctrine in *Watson v. Jones* are often required to resolve doctrinal and church government disputes. Should the compulsory deference doctrine be abandoned in favor of the neutral principles of law method described by this Court in *Jones v. Wolf*?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	7
A. Summary of Reasons	7
B. The Washington Supreme Court's Decision Interprets an Important Issue of Federal Law That Conflicts With a Decision of This Court	9
1. History of this Court's Key Rulings Regarding State Involvement in Church Property Disputes	9
2. Judicial Treatment of Church Property Disputes Is Now a Patchwork of Rules and Tests	14

Table of Contents

Page

3. Under Either Approach, a State Court May Not Insert Itself into Ecclesiastical Matters in Resolving a Property Dispute 16

4. The Compulsory Deference Rule Requires State Courts to Do What This Court Has Forbidden: Entangle Themselves in Questions of Ecclesiastical Government 19

5. As With Other States Applying the Watson Rule, the State Court Entangled Itself in Ecclesiastical Matters Here 21

CONCLUSION 24

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE COURT OF APPEALS OF WASHINGTON, DIVISION TWO FILED FEBRUARY 2, 2010 ..... 1a

APPENDIX B — FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY FILED IN OPEN COURT MARCH 31, 2008 ..... 20a

APPENDIX C — MANDATE IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON 35a

TABLE OF CITED AUTHORITIES

Page

CASES:

African Methodist Episcopal Church, Inc. v. Stewart, 28 So. 3d 1044 (La. Ct. App. 1st Cir. 2009) ... 14

African Methodist Episcopal Zion Church, Ex parte, 860 So.2d 870 (Ala. 2003) 14

Bethel AME Church of Newberry, Florida v. Domingo, 654 So. 2d 233 (Fla. Dist. Ct.App. 1st Dist. 1995) 15

Bishop and Diocese of Colorado v. Mote, 716 P.2d 85 (Colo. 1986) 14

Board of Managers of Diocesan Missionary v. Church of Holy Comforter, 628 N.Y.S.2d 471 (N.Y. 1993) 15

Choi v. Sung, 225 P.3d 425 (Wash.App. 2010) 8, 21, 22, 23

Church of God in Christ, Inc. v. Stone, 452 F. Supp. 612 (D. Kan. 1976) 16

Church of God Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc., 716 So. 2d 200 (Miss. 1998) 14-15

Cited Authorities

Page

East Lake Methodist Episcopal Church, Inc. v. Trustees of Peninsula-Delaware Annual Conference of United Methodist Church, Inc., 731 A.2d 798 (Del. 1999) 14

Employment Div., Dep't of Human Res. v. Smith, 494 U.S. 872 (1990) 9

Episcopal Diocese of Massachusetts v. Devine, 797 N.E.2d 916 (Mass. 2003) 16

Fairmount Presbyterian Church, Inc. v. Presbytery of Holston of Presbyterian Church of U.S., 531 S.W.2d 301 (Tenn. Ct. App. 1975) 15

Fire Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church, 475 S.E.2d 767 (S.C. Ct. App. 1996) 15

First English Lutheran Church of Oklahoma City v. Bloch, 159 P.2d 1006 (Ok. 1945) 15

First Evangelical Methodist Church of Lafayette v. Clinton, 360 S.E.2d 584 (Ga. 1987) 14

Fonken v. Community Church of Kamrar, 339 N.W.2d 810 (Iowa 1983) 15, 20

Cited Authorities

Page

Foss v. Dykstra,
342 N.W.2d 220 (S.D. 1983) 15

Geiss v. Trinity Lutheran Church Congregation,
230 N.W. 658, 119 Neb. 745
(Neb. May 9, 1930) 15

Gonzalez v. Roman Catholic Archbishop of Manila,
280 U.S. 1 (1929) 10

Harris v. Matthews,
643 S.E.2d 566 (N.C. 2007) 16

In re Church Of St. James The Less,
888 A.2d 795 (Pa. 2005) 15

In Re Episcopal Church Cases,
198 P.3d 66 (2009) 14

Jones v. Wolf,
443 U.S. 595 (1979) ..... *passim*

John Chrysostom Greek Catholic Church of Pittsburgh v. Elko,
259 A.2d 419, *cert. denied*,
399 U.S. 920 (1969) 19

Karoly v Hungarian Reformed Church,
91 A. 808 (N.J. 1914), *aff'd without op.*,
93 A, 1085 (N.J. 1915) 19-20

Cited Authorities

Page

Kendysh v. Holy Spirit Byelorussian Autocephalic Orthodox Church, 683 F. Supp. 1501 (E.D. Mich. 1987) 20

Kleppinger v. Anglican Catholic Church, Inc., 715 A.2d 1033 (N.J. Ch. Div. 1998) 16

Lamont Community Church v. Lamont Christian Reformed Church, 777 N.W.2d 15 (Mich. 2009) 15

Marich v. Kragulac, 415 N.E.2d 91 (Ind. Ct. App. 1981) 15

Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, 396 U.S. 367 (1970) 12, 13

McCree v. Walker, 101 S.W.3d 276 (Ark. 2003) 15, 20, 21

Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of African Methodist Episcopal Church Inc., 703 A.2d 194 (Md. 1997) 14

Nolynn Ass'n of Separate Baptists in Christ v. Oak Grove Separate Baptist Church, 457 S.W.2d 633 (Ky. 1970) 15

Cited Authorities

	Page
Norfolk Presbytery v. Bollinger, 201 S.E.2d 752 (1974).	15
Ohio Southeast Conference of Evangelical United Brethren Church v. Kruger, 243 N.E.2d 781 (Ohio 1968)	15
Original Glorious Church of God In Christ, Inc. of Apostolic Faith v. Myers, 367 S.E.2d 30 (1988).	15
Piletich v. Deretich, 328 N.W.2d 696 (Minn. 1982)	14
Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969)	*passim*
Presbytery of Bismarck v. Allen, 22 N.W.2d 625 (N.D. 1946)	15
Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc., 552 S.W.2d 865 (Tex. Civ. App. Texarkana 1977)	15
Presbytery of Elijah Parish Lovejoy v. Jaeggi, 682 S.W.2d 465 (Mo. 1984)	15

Cited Authorities

Page

Rector, Wardens and Vestrymen of Trinity-Saint Michael's Parish, Inc. v. Episcopal Church in Diocese of Connecticut, 620 A.2d 1280 (Conn. 1993) 16

Schismatic and Purported Casa Linda Presbyterian Church v. Grace Union Presbytery, Inc., 710 S.W.2d 700 (Tex. Ct. App. 1986) 20

St. Michael's Ukrainian Greek Catholic Church of Woonsocket v. Bohachewsky, 196 A. 796 (R.I. 1938) 16

St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conference of United Methodist Church, Inc., 145 P.3d 541 (Ak. 2006) 14

Skelton v. Word Chapel, Inc., 637 P.2d 753 (Ariz. App. Div. 1 1981) 14

Tea v. Protestant Episcopal Church in Diocese of Nevada, 610 P.2d 182 (Nev. 1980) 15

Watson v. Jones, 80 U.S. 679 (1871) ..... *passim*

Page

Wisconsin Conference Bd. of Trustees of United Methodist Church, Inc. v. Culver, 627 N.W.2d 469 (Wisc. 2001) 16

York v. First Presbyterian Church of Anna, 474 N.E.2d 716 (Ill. 5th Dist. 1984) 14

STATUTES

U.S. Const. Amend. XIV 9

Supreme Court Rule 10(c) 7, 8

U.S. Const. Amend. I ..... *passim*

U.S. Const. Amend. XVI § 1 1

28 U.S.C. § 1257 (a) 1

OPINIONS BELOW

The opinion of the Court of Appeals of Washington is reported at 225 P.3d 425. It is reprinted at Appendix A. The unreported Findings of Fact and Conclusions of Law dated March 31, 2008 of the Superior Court of Washington For Pierce County is reprinted at Appendix B.

JURISDICTION

The Supreme Court of Washington declined to review the opinion of the Court of Appeals on July 7, 2010 (Appendix C). This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof....

U.S.C.A. Const. Amend. I (in relevant part).

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C.A. Const. Amend. XVI § 1 (in relevant part).

Statutory Provisions

None applicable.

STATEMENT OF THE CASE

In the mid-1980's, Korean immigrant Reverend Samuel Sung founded and incorporated the New Hope Christian Reformed Church ("New Hope CRC")[1] in the State of Washington. New Hope CRC was a non-profit corporation and operated according to its own bylaws, which were initially executed in 1987. The New Hope CRC bylaws blended the rules of the Korean Presbyterian denomination in which Rev. Sung was originally ordained, and the Christian Reformed Church of North America ("CRCNA").

When New Hope CRC was founded in 1985, Rev. Sung began the process of admitting the church into the CRCNA. Aside from an unsecured loan the church has largely repaid, New Hope CRC never received any financial assistance from the CRCNA. Also in 1986, New Hope CRC purchased real property in SeaTac, Washington. The Sung family contributed $20,000 to purchase the property. New Hope CRC was not affiliated with the CRCNA until 1991, when Rev. Sung signed a form of subscription. New Hope CRC agreed to abide by CRCNA religious doctrine in ministerial teaching, and agreed to defer to the CRCNA on ecclesiastical matters of religious teaching and doctrine. In non-ecclesiastical matters, such as running church business

1. The church was originally called "Hope CRC" until Rev. Sung reincorporated it in 1997, renaming it "New Hope CRC").

and owning real property, New Hope CRC always operated according its own bylaws, without input or oversight from the CRCNA. New Hope CRC bylaws contained qualifications for ministry positions, such as elder and deacon.

Rev. Sung and members of his family devoted their lives and financial resources to maintaining New Hope CRC. For many years, the Sung family paid the mortgage on the church property. From 1985 - 1995, New Hope CRC was not fully supported by the congregation. Rev. Sung, his wife, and three children all worked to subsidize it.

In 1997, New Hope CRC sold its SeaTac property and purchased real property in Tacoma, which is the subject of this action. In 2000, the New Hope CRC non-profit corporation was administratively dissolved by the Secretary of State.

In 2002, Rev. Sung decided to retire from the New Hope CRC ministry, and he began looking for someone to replace him as its Senior Pastor. Consistent with his course of dealing throughout the prior 18 years, Rev. Sung did not look to the CRCNA for a replacement minister, nor did he consult the ecclesiastical rules and regulations of the CRCNA. He acted independently. In October 2002, Rev. Sung signed an agreement with Rev. Byung Kim to replace Rev. Sung as Senior Pastor of New Hope CRC. Rev. Kim was an ordained minister from another denomination, the Presbyterian Church of the USA ("PCUSA"). Rev. Kim also had his own congregation with separate church members and leaders at another church known as the Joo-Shin Church. Among the leadership of the Joo-Shin church at that time were In Min Kim and Myung Soon Hinton.

After the October 2002 agreement between Rev. Kim and Rev. Sung was executed, Rev. Kim began to conduct religious services at New Hope CRC. One year later, without becoming ordained in the CRCNA, he abandoned New Hope CRC.

In November 2003, Tae Y. Choi joined New Hope CRC. Choi had been active in leadership in a variety of denominations, but he was never a member of the CRCNA. In January 2004, while Rev. Sung was away, Choi was installed by the leadership of Rev. Kim's Joo-Shin congregation as a church elder. Choi did not qualify for an elder position under the New Hope CRC bylaws. Choi, Kim, and Hinton were never elected to corporate board or officer positions within the New Hope CRC non-profit corporation, which had been dissolved in 2000.

When Rev. Sung returned to Tacoma in December 2004, he resumed his position as Senior Pastor of the congregation, and began the process of selecting a replacement. Choi, Kim and Hinton rejected Rev. Sung's return as pastor, and began looking to other denominations for a replacement. Rev. Sung then ejected the Joo Shin congregation from the Tacoma property.

Because the property belonged to the New Hope CRC corporation which had been administratively dissolved in 2000, in March 2005, Rev. Sung sought the consent of the members of the original New Hope CRC congregation transfer ownership. New Hope CRC voted unanimously to deed title to the Tacoma property to Morning Star World Mission, an existing corporation which could continue New Hope CRC church. Rev. Sung executed and recorded the quit claim deed on April 7, 2005.

After learning that the quit claim deed had been recorded, Choi attempted to claim ownership of the New Hope CRC corporation. He filed a business license application, claiming to be 90% owner of the dissolved corporation. He filed for reinstatement of the non-profit corporation, of which he had never been an owner, officer, or member. He also filed using the same state registration number that had been assigned to the dissolved New Hope CRC. Choi called his corporation the New Hope Christian Reformed Church of Tacoma. The following year, Choi and the other respondents filed suit to quiet title to the Tacoma property at issue, obtaining the support of an unincorporated subsidiary of the CRCNA, known as the Classis Pacific Northwest ("Classis"). Together they claimed that the Tacoma property, purchased by Rev. Sung and the original New Hope CRC congregation, legally belonged to the CRCNA.

Within the CRCNA, individual churches, such as New Hope CRC, operate according to their own bylaws and articles of incorporation. Individual churches hold title to church property, and the CRCNA is in no way involved in transfers of real property by individual churches, or any administrative affairs of individual churches. The governing body of every individual CRCNA church is selected at the local level. The CRCNA does not decide who governs local churches. Consistent with these facts, the trial court found that the CRCNA conducted itself as a congregational, rather than hierarchical, church organization. Appendix at 27a.

Nevertheless, it awarded the property to the CRNCA and the Joo-Sin congregation. *Id.* at 31a. The trial court made a number of doctrinal findings. The trial court found that "there was no evidence presented that the Classis decision on these matters was contrary to the Word of God." *Id.* at 26a. It also found that Rev. Sung's independent church governance was "largely not harmful to the general church function." *Id.* at 23a. It found that "the Reformation, which gave birth to the CRCNA, was largely about governance." *Id.* at 29a.

Rev. Sung appealed the trial court's judgment to the Washington State Court of Appeals. The Court of Appeals affirmed, and like the trial court, made findings regarding ecclesiastical matters. For example, the court found that "Although the PCUSA is a different denomination than the CRCNA, the record demonstrates that Presbyterian and Christian Reformed Churches share common historical roots and are fairly similar in terms of doctrine and governance." *Id.* at 428 n.3. The court found that "The Classis, *following church policy and rules of governance*, directed the Classis Interim Committee ("CIC") to investigate the dispute between Sung and the ousted congregation." *Id.* at 429. The court did not explain how it knew that the Classis had followed church policy and governance in so doing. The court also noted that

> To be affiliated with the CRCNA, a church must agree to certain rules in the "Church Order and Rules for Synodical Procedure." One rule requires the Classis or Synod (the assembly above the Classis) to resolve disputes concerning ecclesiastical matters.

> The churches must agree that the Classis or Synod rulings are binding on them, *unless those rulings "conflict with the Word of God."*

Id. (emphasis added). The court concluded that the Classis' ruling was binding on Sung, but did not explain how determined that it did not conflict with the Word of God. *Id.* at 433.

Rev. Sung petitioned the Washington Supreme Court for review of the Court of Appeals' decision. Review was denied on July 7, 2010.

REASONS FOR GRANTING THE WRIT

A. Summary of Reasons

Under Supreme Court Rule 10(c), this Court has jurisdiction and discretion to review a case if "a state court or a United States Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

This Court has offered states multiple methods for resolving disputes over church property. The two main methods are the "compulsory deference" doctrine in *Watson v. Jones*, 80 U.S. 679 (1871), which requires courts to determine the structure, policy, and government of a church, and the "neutral principles" approach of *Jones v. Wolf*, 443 U.S. 595 (1979), which requires courts only to apply the law as it would apply to any other voluntary non-religious organization.

Regardless of how courts approach these disputes, one clear rule has endured: courts must always avoid becoming entangled in ecclesiastical matters. They must not allow a purported civil dispute over property to become a dispute over church doctrine, government, policy, or practice. Civil courts have no place deciding such issues.

Yet the compulsory deference doctrine – adopted by this Court in 1871 and still in use by a handful of states today – *requires* courts to delve into matters of church doctrine, practice, and government in order to determine whether the local church is independent, or is subservient to the ecclesiastical decisions of a higher church body.

The Washington State Court of Appeals here became deeply entangled in ecclesiastical matters in trying to apply the compulsory deference doctrine. It ruled, directly or by implication, on matters relating to ecclesiastical doctrine, policy, practice and government, which this Court has forbidden. Most egregious is the Court of Appeals acknowledgement that the ruling of the Classis was only binding on Sung if it did not conflict with the Word of God, followed by its finding that he was in fact bound by it. *Choi v. Sung*, 225 P.3d 425, 433 (2010).

The Washington court is hardly the first to encounter this problem. Other states attempting to apply the compulsory deference doctrine have had similar entanglements, with unconstitutional results.

This case meets the test of Rule 10(c). The court's decision here amply demonstrates that it is time for this

Court to abandon *Watson* and require states to embrace the neutral principles approach to church property disputes.

B. The Washington Supreme Court's Decision Interprets an Important Issue of Federal Law That Conflicts With a Decision of This Court

1. History of this Court's Key Rulings Regarding State Involvement in Church Property Disputes

The First Amendment and the ecclesiastical abstention doctrine preclude civil courts from inquiring into ecclesiastical matters.[2] Ecclesiastical matters include "a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them." *Watson*, 80 U.S. at 733.

In 1871 this Court in *Watson* first addressed a dispute over ownership of church property stemming from a rift between two religious factions of a local church. In analyzing the dispute, this Court distinguished between churches with congregational or independent organizations, governed solely within themselves, and those where a congregation was part of a larger, structured denomination. When property disputes arose in hierarchical churches, this Court adopted an approach deferential to the hierarchy, explaining:

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2. The First Amendment applies to the states by its incorporation into the due process clause of the Fourteenth Amendment. U.S. Const. amend. XIV; *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 872, 876-77 (1990).

> [W]e think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Watson, 80 U.S. at 727.

Although in the early years of the 20th century courts dabbled in exceptions to the *Watson* deference approach for "fraud, collusion, or arbitrariness," (*see, e.g., Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1, 14 (1929)), the *Watson* approach was not substantially modified until this Court's decision in *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) ("*Hull*"). *Hull* involved the withdrawal of two local churches from the Presbyterian church, because the local organizations believed that certain actions of the general church were departures from the doctrine and practice in force when they became affiliated with the church. *Id.* at 442. The local churches denounced the jurisdiction of the general church, and an administrative commission appointed by the general church (after it failed to broker a reconciliation) acknowledged the withdrawal of the local

church and took over the local churches' property. *Id.* The local churches did not appeal to higher church tribunals but instead filed a civil suit in the Georgia courts. *Id.* at 423. The Supreme Court of Georgia affirmed a jury verdict in favor of the local churches that was based on the theory that Georgia law implied a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to tenets of faith existing at the time of affiliation by the local churches. *Id.* at 443-44.

This Court reversed, reasoning that the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. The First Amendment forbids civil courts from playing such a role. *Id.* at 450.

In *Hull* – which is strikingly similar to the present case – this Court laid the foundation for a competing view of the proper role of civil courts in resolving church property disputes. It found that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. *Id.* at 449. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without establishing churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious

doctrine and practice. *Id.* If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. *Id.*

In a concurring opinion in *Maryland & Virginia Eldership of the Churches of God v. Church of God at Sharpsburg,* 396 U.S. 367 (1970), Justice Brennan elaborated on this Court's decision in *Hull*, noting that "a State may adopt any one of various approaches for settling church property disputes *so long as it involves no consideration of doctrinal matters*, whether the ritual and liturgy of worship or tenets of faith." *Id.* at 368. He noted that courts could adopt the *Watson* approach, enforcing property decisions made within a hierarchical church by the highest authority within the church that ruled on the dispute. *Id.* However, citing *Hull* he noted that

> [n]eutral principles of law, developed for use in all property disputes provide another means for resolving litigation over religious property. Under the "formal title" doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Again, however, general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues. For example, provisions in deeds or in a denomination's constitution for the reversion of local church property to the general church, if conditioned upon a finding of departure from doctrine, could not be civilly enforced.

Id. at 370 (quotations and citations omitted). As a third alternative, Justice Brennan suggested that states pass "special state statutes governing church property arrangements in a manner that precludes state interference in doctrine." *Id.*

Jones is the latest decision of this Court to offer guidance to state courts in resolving church property disputes, although it is now over thirty years old. This Court expressly found that the First Amendment does not require the states to adopt a rule of compulsory deference to religious authorities, and held that "a State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." *Id.* at 596. The discussion in *Jones* suggests that while states retain the leeway to implement the deference approach of *Watson*, the neutral principles approach is the preferred approach.

> The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties.

Id. at 603. Thus, this Court established that the best way to avoid ecclesiastical entanglement is for states to adopt the neutral principles approach.

2. Judicial Treatment of Church Property Disputes Is Now a Patchwork of Rules and Tests

Under *Jones* and *Hull*, state courts are permitted to adopt either the neutral principles approach or the compulsory deference approach. This has resulted in a patchwork of rules across the jurisdictions.

Alabama, Alaska, Arizona, California, Colorado, Delaware, Georgia, Illinois, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New York, Pennsylvania, South Dakota, Tennessee, and Virginia have adopted the *Jones* and *Hull* neutral principles doctrine.[3]

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3. *African Methodist Episcopal Zion Church, Ex parte*, 860 So.2d 870 (Ala. 2003); *St. Paul Church, Inc. v. Board of Trustees of Alaska Missionary Conference of United Methodist Church, Inc.*, 145 P.3d 541 (Ak. 2006); *Skelton v. Word Chapel, Inc.*, 637 P.2d 753 (Ariz. App. Div. 1 1981); *In re Episcopal Church Cases*, 198 P.3d 66 (2009); *Bishop and Diocese of Colorado v. Mote*, 716 P.2d 85 (Colo. 1986); *East Lake Methodist Episcopal Church, Inc. v. Trustees of Peninsula-Delaware Annual Conference of United Methodist Church, Inc.*, 731 A.2d 798 (Del. 1999); *First Evangelical Methodist Church of Lafayette v. Clinton*, 360 S.E.2d 584 (Ga. 1987); *York v. First Presbyterian Church of Anna*, 474 N.E.2d 716 (Ill. 5th Dist. 1984); *African Methodist Episcopal Church, Inc. v. Stewart*, 28 So. 3d 1044 (La. Ct. App. 1st Cir. 2009); *Mt. Olive African Methodist Episcopal Church of Fruitland, Inc. v. Board of Incorporators of African Methodist Episcopal Church Inc.*, 703 A.2d 194 (Md. 1997); *Piletich v. Deretich*, 328 N.W.2d 696 (Minn. 1982); *Church of God*

(Cont'd)

Arkansas, Florida, Indiana, Iowa, Kentucky, Michigan, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, South Carolina, Texas, Washington, and West Virginia adhere to the *Watson* compulsory deference approach.[4]

(Cont'd)

Pentecostal, Inc. v. Freewill Pentecostal Church of God, Inc., 716 So. 2d 200 (Miss. 1998); *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984); *Geiss v. Trinity Lutheran Church Congregation*, 230 N.W. 658, 660, 119 Neb. 745, 745 (Neb. May 09, 1930). *Board of Managers of Diocesan Missionary v. Church of Holy Comforter*, 628 N.Y.S.2d 471 (N.Y. 1993); *In re Church Of St. James The Less*, 888 A.2d 795 (Pa. 2005); *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983); *Fairmount Presbyterian Church, Inc. v. Presbytery of Holston of Presbyterian Church of U. S.*, 531 S.W.2d 301 (Tenn. Ct. App. 1975); *Norfolk Presbytery v. Bollinger*, 201 S.E.2d 752 (1974).

4. *McCree v. Walker*, 101 S.W.3d 276 (Ark. 2003); *Bethel AME Church of Newberry, Florida v. Domingo*, 654 So. 2d 233 (Fla. Dist. Ct. App. 1st Dist. 1995); *Marich v. Kragulac*, 415 N.E.2d 91 (Ind. Ct. App. 1981); *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810 (Iowa 1983); *Nolynn Ass'n of Separate Baptists in Christ v. Oak Grove Separate Baptist Church*, 457 S.W.2d 633 (Ky. 1970); *Lamont Community Church v. Lamont Christian Reformed Church*, 777 N.W.2d 15 (Mich. 2009); *Tea v. Protestant Episcopal Church in Diocese of Nevada*, 610 P2d 182 (Nev. 1980); *Presbytery of Bismarck v. Allen*, 22 N.W.2d 625 (N.D. 1946); *Ohio Southeast Conference of Evangelical United Brethren Church v. Kruger*, 243 N.E.2d 781 (Ohio 1968); *First English Lutheran Church of Oklahoma City v. Bloch*, 159 P2d 1006 (Ok. 1945); *Fire Baptized Holiness Church of God of Americas v. Greater Fuller Tabernacle Fire Baptized Holiness Church*, 475 S.E.2d 767 (S.C. Ct. App. 1996); *Presbytery of the Covenant v. First Presbyterian Church of Paris, Inc.*, 552 S.W.2d 865 (Tex. Civ. App. Texarkana 1977); *Original Glorious Church of God In Christ, Inc. of Apostolic Faith v. Myers*, 367 S.E.2d 30 (1988).

States not expressly adhering to either *Watson* or *Jones* offer a hodgepodge of approaches to the issue. Connecticut, New Jersey, North Carolina, and Wisconsin have concluded that the two methods should be melded together. *Rector, Wardens and Vestrymen of Trinity-Saint Michael's Parish, Inc. v. Episcopal Church in Diocese of Connecticut*, 620 A.2d 1280 (Conn. 1993); *Kleppinger v. Anglican Catholic Church, Inc.*, 715 A.2d 1033 (N.J. Ch. Div. 1998); *Harris v. Matthews*, 643 S.E.2d 566 (N.C. 2007); *Wisconsin Conference Bd. of Trustees of United Methodist Church, Inc. v. Culver*, 627 N.W.2d 469 (Wisc. 2001). Kansas has not spoken on the matter, although the federal district court applying Kansas law has ruled in schism cases as to which faction was the "true representative" of the religion as it existed before the schism. *See, e.g., Church of God in Christ, Inc. v. Stone*, 452 F. Supp. 612 (D. Kan. 1976). Rhode Island has taken a similar approach to Kansas in at least one case when it evaluated witnesses' "personal conduct in connection with the religious observances" of the faith and the "rituals" followed by the priests. *St. Michael's Ukrainian Greek Catholic Church of Woonsocket v. Bohachewsky*, 196 A. 796 (R.I. 1938). Massachusetts selects one approach or the other on a case-by-case basis. *Episcopal Diocese of Massachusetts v. Devine*, 797 N.E.2d 916 (Mass. 2003).

3. Under Either Approach, a State Court May Not Insert Itself into Ecclesiastical Matters in Resolving a Property Dispute

Regardless of whether a jurisdiction has adopted the "neutral principles" or "compulsory deference" doctrine, the First Amendment severely circumscribes the role that civil courts may play in resolving church

property disputes. *Hull*, 393 U.S. at 449. If any resolution of the dispute requires inquiry into ecclesiastical matters such as religious discipline, faith, internal organization, or ecclesiastical rule, custom, or law a civil court may not intervene. *Milivojevich*, 426 U.S. at 714.

Although this Court in *Jones* did not expressly overrule *Watson*, the majority of the Court sharply criticized the *Watson* approach, particularly the increased likelihood that compulsory deference would lead to First Amendment violations. This Court rejected the dissent that would have required compulsory deference in all cases, explaining that compulsory deference *increased*, not decreased, the likelihood that courts would become deeply entangled in ecclesiastical matters:

> The dissent suggests that a rule of compulsory deference would somehow involve less entanglement of civil courts in matters of religious doctrine, practice, and administration. Under its approach, however, civil courts would always be required to examine the polity and administration of a church to determine which unit of government has ultimate control over church property. In some cases, this task would not prove to be difficult. But in others, the locus of control would be ambiguous, and "[a] careful examination of the constitutions of the general and local church, as well as other relevant documents, would be necessary to ascertain the form of governance adopted by the members of the religious association." In such

cases, the suggested rule would appear to require a searching and therefore impermissible inquiry into church polity." The neutral principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.

The dissent also argues that a rule of compulsory deference is necessary in order to protect the free exercise rights "of those who have formed the association and submitted themselves to its authority." This argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational

> church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form.

Jones, 443 U.S. at 605-06 (citations omitted). Therefore, while not eliminating the compulsory deference approach as an option in "simple" cases, this Court made it quite clear that the approach is untenable when the case cannot be resolved without extensive examination of church government. *Id.*

4. The Compulsory Deference Rule *Requires* State Courts to Do What This Court Has Forbidden: Entangle Themselves in Questions of Ecclesiastical Government

The problem that this Court warned against in *Jones* regarding compulsory deference has persisted in those states adhering to the doctrine. Courts applying *Watson must* explore matters of church governance surrounding the relationship between the local church and the denomination, despite this Court's admonitions against doing so.

Examples of these forays into church government and doctrine abound. For example, New Jersey has examined the formal or direct ties between the local church and the denomination, especially those indicating subservience or, on the other hand, independence of the local church. *John Chrysostom Greek Catholic Church of Pittsburgh v. Elko*, 259 A.2d 419, *cert. denied*, 399 U.S. 920 (1969), *Karoly v Hungarian Reformed Church*,

91 A. 808 (N.J. 1914), *aff'd without op.* 93 A 1085 (N.J. 1915). In Iowa, a local church holding title to church property voted to disassociate from the Presbyterian hierarchy. *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810, 816 (Iowa 1983). The court refused to hear the local church members' arguments that their church was ecumenical, concluding that to do so "would require an impermissible inquiry into doctrine." *Id.* at 817. However, the court intensely examined governing documents and doctrines of the Presbyterian church to support its finding that the church was hierarchical. *Id.* Despite the local church holding clear title, the court found an implied trust in favor of the national Presbyterian church and gave it the property. *Id.*

Other states have delved even more deeply into ecclesiastical matters. Michigan has established a "living relationship test" which closely examines "whether the local organization accepted ministers appointed by diocesan executives, regularly sent delegations to denominational convocations, received financial assistance from the general church, or made payments to the funds of the general church." *Kendysh v. Holy Spirit Byelorussian Autocephalic Orthodox Church*, 683 F. Supp. 1501, 1511 (E.D. Mich. 1987) (applying Michigan law). Texas courts applying the rule have made determinations regarding which faction of a local congregation represents the "true church." *Schismatic and Purported Casa Linda Presbyterian Church v. Grace Union Presbytery, Inc.*, 710 S.W.2d 700, 707 (Tex. Ct. App. 1986). In Arkansas, the state courts resolved a dispute regarding who was the rightful pastor of a church. *McCree v. Walker*, 101 S.W.3d 276, 277 (Ark. App. 2003). In doing so, the courts rejected a Baptist church

doctrine known as "silencing," in which a church member is stripped of power to vote on church affairs. *Id.*

Courts purportedly applying the *Watson* compulsory deference rule are caught in a Catch-22. By examining matters of church governance and doctrine to ascertain its structure, they directly violate this Court's central First Amendment principle that civil courts should not become entangled in matters of ecclesiastical government. Before concluding which body must be deferred to, they must dissect, evaluate, analyze, and rule upon questions of church government, religious doctrine, and other ecclesiastical matters.

5. As With Other States Applying the *Watson* Rule, the State Court Entangled Itself in Ecclesiastical Matters Here

Washington State courts adhere to the *Watson* compulsory deference doctrine, and as has happened in many cases applying the compulsory deference approach, the court here entangled itself in ecclesiastical matters. In fact, the Washington Court of Appeals here tacitly admitted it rested its decision upon ecclesiastical interpretation. The court ruled not on the issue of which entity held the property in question, but on the issue of whether the local church or the Classis was entitled to determine who was a church member. *Choi v. Sung*, 225 P.3d 425, 432 (Wash. App. 2010). It then said that doctrinal principles governed which congregation owned the property. *Id.*

The *Choi* opinion here is rife with findings, both implicit and explicit, on doctrinal matters. For example, the court found that "Although the PCUSA is a different

denomination than the CRCNA, the record demonstrates that Presbyterian and Christian Reformed Churches share common historical roots and are fairly similar in terms of doctrine and governance." *Id.* at 428 n.3. The court found that "The Classis, *following church policy and rules of governance*, directed the Classis Interim Committee (CIC) to investigate the dispute between Sung and the ousted congregation." *Id.* at 429 (emphasis added). The court did not explain how it knew that the Classis had followed church policy and governance in so doing. The court also noted that

> To be affiliated with the CRCNA, a church must agree to certain rules in the "Church Order and Rules for Synodical Procedure." One rule requires the Classis or Synod (the assembly above the Classis) to resolve disputes concerning ecclesiastical matters. The churches must agree that the Classis or Synod rulings are binding on them, unless those rulings "conflict with the Word of God."

Id. The court concluded that the Classis' ruling was binding on Sung, but did not explain how determined that it did not conflict with the Word of God. *Id.* at 433.

The Court of Appeals was merely echoing the trial court's numerous findings on ecclesiastical matters. The trial court found that "there was no evidence presented that the Classis decision on these matters was contrary to the Word of God." Appendix at 26a. It also found that Rev. Sung's independent church governance was "largely not harmful to the general church function."

Id. at 23a. It found that "the Reformation, which gave birth to the CRCNA, was largely about governance." *Id.* at 29a.

Also as predicted by this Court in *Jones*, the entanglement in ecclesiastical matters here resulted from a complex factual record. The trial court found, and the Court of Appeals acknowledged, that the New Hope CRC bore characteristics of both congregational and hierarchical churches:

> Here, the trial court's finding of fact determining whether New Hope CRC was hierarchical or congregational is somewhat equivocal. The finding states that "[t]here was testimony that [the church] is a blend, and that is probably true, but [the church] is clearly more congregational." What follows that statement is an explanation by the trial court that the congregation had to follow "certain rules or concepts" in order to affiliate with the CRCNA.

Id. at 432. The Court of Appeals also acknowledged that New Hope CRC conducted its church affairs as if it were congregational. *Id.* at 433. However, the court ultimately rejected the local church policy and doctrine in favor of the statements of policy and doctrine located in documents produced by the CRCNA. *Id.*

The state court here entangled itself in ecclesiastical matters by resolving issues of church doctrine and practice. In relying on *Watson* and rejecting the neutral principles of law approach, it resolved a property dispute on the basis of ecclesiastical principles, which is forbidden by this Court.

C. CONCLUSION

As this case makes clear, state courts cannot avoid becoming entangled in ecclesiastical matters when applying *Watson*. Examinations of church policy, practice, doctrine, and governance inhere in any discussion of the compulsory deference doctrine.

This Court now has decades of case law with which to compare the efficacy of the two doctrines. The time has come for this Court to reexamine *Watson* and determine whether it is permissible under the First Amendment to allow the compulsory deference doctrine to be applied in church property disputes.

DATED this 5th day of October, 2010.

Respectfully submitted,

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to transfer the disputed property to New Hope Christian Reformed Church of Tacoma, and to pay any revenues generated from the property during their wrongful ownership to the church. Applying the "deference approach" discussed in *Presbytery of Seattle, Inc. v. Rohrbaugh,* 79 Wash.2d 367, 485 P.2d 615 (1971), and *Southside Tabernacle v. Pentecostal Church of God,* 32 Wn. App. 814, 650 P.2d 231 (1982), with regard to church property disputes, we affirm the trial court's order.

FACTS

I. History of New Hope Christian Reformed Church

Samuel Sung became a minister in the Christian Reformed Church of North America (CRCNA) in 1985. He founded the Hope Christian Reformed Church (Hope CRC) in Seattle around the same time. In 1991, Hope CRC became an officially recognized member of the CRCNA and the Classis Pacific Northwest, a regional association of CRCNA churches in Western Washington and Alaska. Sung served as pastor to Hope CRC, and its successor New Hope Christian Reformed Church (New Hope CRC), from its inception until his retirement in 2003.

Originally, Hope CRC owned property in SeaTac. In 1999, it sold that property and purchased property in Tacoma, which is the property in dispute here. When Hope CRC moved to Tacoma, it changed its name to New Hope CRC.[1]

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1. When Hope CRC moved to Tacoma, it had only 10 members.

Appendix A

Sung originally incorporated "Hope Christian Reformed Church," Unified Business Identifier (UBI) No. 23-705-023 in 1986. Clerk's Papers (CP) at 134. The State administratively dissolved the corporation in 1994 for failure to file its annual list of officers. Sung seldom maintained the church's corporate status or kept corporate minutes or records. In 1997, Sung formed a second entity, "Hope Christian Reformed Church of Seattle," UBI No. 601-811-132, apparently to reinstate the original Hope CRC. CP at 134. In 1999, the second Hope CRC entity changed its name to "New Hope Christian Reformed Church," but in 2000 it too was dissolved. CP at 134.

The CRCNA has many rules and requirements for its member churches, which are set forth in the "Church Order and Rules for Synodical Procedure" (Church Order). Ex. 45. The Church Order generally requires governance by a church council composed of a senior pastor, church elders, and church deacons. Sung did not always abide by CRCNA rules.[2] For example, as pastor, Sung made decisions without the church council's participation.

As Sung neared retirement, he began to seek someone to replace him. Sung chose not to follow CRCNA

2. When Hope CRC joined the CRCNA in 1991, Sung signed a "Form of Subscription," stating that he would follow the CRCNA "church order." Ex. 102, at 34, 35. During deposition, however, Sung argued that although he signed the form, he had agreed to follow the "church order" only "in part." Ex. 102, at 35. There is nothing indicating that Sung's agreement with the CRCNA was different from any other form of subscription.

procedure for this process. Instead, Sung found someone whom he thought was a suitable candidate, Reverend B. Kim, a minister in the Presbyterian Church (PCUSA).[3] Sung and Kim entered into an agreement that would merge their two churches and allow Kim to become minister of the New Hope CRC.[4] At the time of the merger, Sung's congregation had dwindled to 15 members, consisting of Sung's family and two or three other families. Kim's congregation had approximately 40-50 members.

In October 2002, Sung drafted and executed the agreement, which he wrote in Korean. At trial, translators disagreed about the precise meaning, but in essence the agreement provided that:

> a. Reverend B. Kim was to take over as Senior Pastor of the New Hope [CRC];
>
> b. Reverend B. Kim was to become [an officially sanctioned] CRCNA pastor;

3. Although the PCUSA is a different denomination than the CRCNA, the record demonstrates that Presbyterian and Christian Reformed Churches share common historical roots and are fairly similar in terms of doctrine and governance. At times, Sung claimed that New Hope CRC ceased to associate with the CRCNA between 2003 and 2004 because certain literature referred to the church as "New Hope Presbyterian Church." The CRCNA disputes this by providing evidence that many of its local congregations use the term "Presbyterian" in their church names with its full blessing. Ex. 76, at 2.

4. Sung did not have approval from his congregation to enter into this agreement.

> c. Reverend Sung was to be paid $ 60,000 [in cash] and the new congregation was to assume $ 40,000 in debt;[5]
>
> d. There was to be a retirement ceremony for Sung.
>
> CP at 135. Neither the Classis nor the CRCNA was informed of this agreement.

Kim's congregation raised $ 60,000 and paid it to Sung. Sung officially retired in April 2003. Sung's CRCNA status changed from senior pastor to "Pastor Emeritus," which was required for him to access his CRCNA pension. CP at 135-36.

Following the merger, new church council members were elected, including Tae Choi, InMin Kim,[6] and Myung Soon Hilton. InMin Kim and Hilton joined New Hope CRC in 2002 as members of Kim's congregation. Choi, who had known Kim for some time, joined New Hope CRC in September 2003 and became a church elder. Kim served as pastor for the New Hope CRC congregation for nearly two years. He started the process of becoming a CRCNA certified pastor, but he did not complete the program. Nonetheless, the CRCNA considered New Hope CRC to be affiliated with them during this period.

5. This debt included a $ 25,000 mortgage on the Tacoma property and a $ 15,000 debt to the Classis.

6. To avoid confusion, plaintiff and church council member "InMin Kim" is always referred to by this name.

After two years, Kim left New Hope CRC, leaving the church without a senior pastor. The church invited various pastors from other denominations to conduct weekly services while New Hope CRC decided what to do.

Sung, who still attended New Hope CRC on a sporadic basis, came back and announced to the church that he would reclaim his position as senior pastor.[7] The church council rejected Sung's offer and asked the Korean Council[8] and the Classis to call for a new pastor in accordance with CRCNA rules. Sung promptly told those who had joined New Hope CRC during the merger with Kim's congregation that they were no longer members of the New Hope CRC congregation.[9] Sung

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7. At his deposition, Sung maintained that he was still the president of the church council after retirement. Counsel asked Sung to clarify how this was the case. Sung responded that because Kim was not formally installed as a CRCNA pastor, "he could not manage [ ] church matters. So that means that up until such time as the new pastor got installed the existing pastor ha[s] the right to operate the church." Ex. 102, at 49. There appears to be no basis for this proposition in the CRCNA's rules. Further, when asked if the postmerger congregation voted him onto the council, Sung's responses were evasive, and he eventually stated, "No." Ex. 102, at 50.

8. The Korean Council is a council of ministers and elders of Korean CRCNA churches within the Northwest Classis.

9. The ousted congregation included the church council and almost all existing members of the church, excluding Sung's family. In a letter to the congregation, Sung wrote, "all member[s] who have joined the New Hope CRC congregation who used to be Rev. Kim's old church, automatically [lose] their rights or claims, whatsoever, on the polity of the church nor [sic] utilization of the church resources and properties." Ex. 26.

informed them that they could no longer hold services at the Tacoma property, and he changed the locks on the building.

In the meantime, Sung set up a new entity called "New Hope Christian Reformed Church," UBI No. 602-450-843, and a second entity called "Morning Star World Mission," UBI No. 602-468-976.[10] Though the record reveals no evidence of elections of council members or formal approval by an elected church council, Sung executed a quitclaim deed to transfer the Tacoma property from New Hope CRC to Morning Star World Mission.[11] Sung claims that a unanimous "vote of the members of his original New Hope CRC congregation and leadership" authorized his actions. Appellant's Br. at 13. However, Sung did not invite Choi or InMin Kim to the meeting to discuss the quitclaim deed or invite them to vote on the matter.

While seeking help from the CRCNA, the ousted congregation began holding services at various homes, eventually renting a room in the basement of another

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10. For the new New Hope entity, the articles of incorporation list only Sung and Jennifer Yang as directors. Further, for the new Morning Star entity, Sung listed himself as the only director in the Articles of Incorporation.

11. The transfer occurred on April 7, 2005. Morning Star has rented the property to another church for $ 1,500 a month. Pl.'s Ex. 89. As of October 2, 2007, Morning Star had received $ 27,500 in payments for use of the Tacoma church space. A large portion of this money goes to Sung in various ways, including mission trips for Morning Star and attorney fees.

church for $ 300 a month. The congregation had a new CRCNA minister, Reverend G. Kim, appointed to serve as pastor on an interim basis.

II. Dispute at the Classis

To be affiliated with the CRCNA, a church must agree to certain rules in the "Church Order and Rules for Synodical Procedure." Ex. 45. One rule requires the Classis or Synod (the assembly above the Classis) to resolve disputes concerning ecclesiastical[12] matters. The churches must agree that the Classis or Synod rulings are binding on them, unless those rulings "conflict with the Word of God." Ex. 45, at 14.

The Classis, following church policy and rules of governance, directed the Classis Interim Committee (CIC) to investigate the dispute between Sung and the ousted congregation. After an investigation, the CIC made the following recommendations to the Classis in March 2005:

> 1. That Rev. Sung resume the honorable position of Pastor Emeritus and not be recognized as the Senior Pastor of the New Hope CRC and not be considered a member of its Council.
>
> 2. That Classis recognize Elder Tae Young Choi as a legitimate elder in the New Hope CRC.

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12. "Ecclesiastical" means "of or relating to a church esp. as a formal and established institution." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 718 (2002).

3. That Classis note that the group with Elder Choi (which has been locked out of the building) is sincere in its desire to be a member congregation in the CRC.

4. That Classis recognize the right of the congregation to begin the process of calling a new Senior Pastor (to be done under the guidance of the Korean Council).

5. That Classis, by these actions, declare that the congregation under the leadership of its Council has the right to the church building and its contents and the Rev. Sung be requested to turn the keys of the building over to the Council.

6. That Classis urge all those involved seek to be reconciled to one another and live in harmony with one another as the Word of God instructs so that the name of our Lord Jesus may be lifted up and not shamed. We as a Classis offer our services toward this end, and particularly stand ready to form a pastoral team to seek reconciliation and pastoral care. This team would be formed under the guidance of the Classical Interim Committee, and include elements of the Korean Counsil [sic].

Ex. 49, at 5. Although the Classis adopted all six recommendations, it did not attempt to implement them immediately. Instead, it called in a mediator from Los Angeles, Reverend Tong Park, to attempt to reach an amicable solution to the dispute. This mediation proved

unsuccessful, however, as Sung refused to submit to the recommendations of the Classis. On April 18, 2005, the Classis stated its intention to implement its recommendations.[13]

In the meantime, Sung had transferred the property to Morning Star on April 7, 2005. The Classis demanded that Sung void the legal documents and relinquish control of the Tacoma property, but Sung refused. In August 2005, the Classis provisionally deposed Sung and divested him of his title as minister of the CRCNA.

Days later however, Sung wrote the Classis a letter indicating his intent to reconcile with the ousted congregation and to follow the Classis's six recommendations.[14] Sung did not follow through on that promise and later claimed to have executed the letter under duress.

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13. Sung had an opportunity to appeal the decisions of the Classis to the Synod, but he did not do so.

14. Part of the letter reads:

> Last Sunday, I announced before the congregation of the New Hope [CRC] of Tacoma, my apologies for causing division and strife in the body of Christ, and announced my intention to fully follow the six recommendations set by March 3, 2005 Classis meeting, including handing over full property rights to the New Hope [CRC] of Tacoma under the jurisdiction of its rightful board of directors as specified by the church order of the [CRC]. I already handed over the church keys and exchanged the words of reconciliation with Elder Choi.

Ex. 30.

Meanwhile, in June 2005, after the Classis's ruling, Elder Choi reinstated the original New Hope CRC entity (UBI No. 601-811-132), which had been dissolved in 2000. Choi successfully reinstated this entity under the new name "New Hope Christian Reformed Church of Tacoma," identifying Choi, InMin Kim, and Hilton as directors. CP at 137. This entity purchased the Tacoma church property before it was dissolved in 2000. Since reinstatement, it has adopted new articles and bylaws consistent with CRCNA rules.

III. The Lawsuit

The ousted congregation, along with the Classis, sued Sung to enforce the Classis's April 2005 decision to implement its recommendations. On April 26, 2006, the plaintiffs filed a lis pendens in Pierce County Superior Court. Sung answered the complaint and pleaded numerous counterclaims, including slander of title for the lis pendens filing. The matter was tried to the bench over 10 days in November 2007. The trial court heard testimony from Sung, Choi, InMin Kim, and several other ministers and witnesses, and the court examined over 100 exhibits.

The trial court issued a letter ruling on January 3, 2008. On March 31, 2008, the trial court entered formal findings of fact and conclusions of law. The formal findings and conclusions derive from the January letter ruling. The trial court found that the ousted congregation's corporate entity, the New Hope Christian Reformed Church of Tacoma, was the "rightful

owner" of the Tacoma property, and the court ordered Sung to convey the property back to it. CP at 140.[15]

Sung now appeals.

ANALYSIS

I. Standard of Review

When a trial court has weighed the evidence in a bench trial, we limit our review to whether substantial evidence supports its factual findings and, if so, whether those findings support the trial court's conclusions of law. *Hegwine v. Longview Fibre Co.*, 132 Wash.App. 546, 555, 132 P.3d 789 (2006). Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true. *In re Estate of Jones*, 152 Wash.2d 1, 8, 93 P.3d 147 (2004). We review only those findings to which appellants assign error; unchallenged findings are verities on appeal. *Hegwine*, 132 Wash.App. at 556, 132 P.3d 789. On appeal, we view the evidence in the light most favorable to the prevailing party and defer to the

15. The trial court also (1) ordered the defendants to pay "all rent and other payments" relating to the use of the property to New Hope Christian Reformed Church of Tacoma pending reconveyance of the property; (2) ordered Morning Star to pay the $ 27,500 in revenues generated from the property through September 10, 2007, and to pay an additional $ 1,500 per month from September 10, 2007 through the date of judgment; and (3) dismissed the defendants' counterclaims with prejudice. CP at 142.

trial court regarding witness credibility and conflicting testimony. *Weyerhaeuser v. Tacoma-Pierce County Health Dep't,* 123 Wash.App. 59, 65, 96 P.3d 460 (2004). We review questions of law and conclusions of law de novo. *Sunnyside Valley Irrigation Dist. v. Dickie,* 149 Wash.2d 873, 880, 73 P.3d 369 (2003). Further, we review conclusions of law erroneously labeled as findings of fact de novo. *Hegwine,* 132 Wash.App. at 556, 132 P.3d 789.

II. *Watson* Compulsory Deference Rule

In reviewing church disputes, courts must take care not to violate the *First Amendment* prohibition against a state entangling itself in matters of church doctrine and practice. The Supreme Court warned against this tendency in *Presbyterian Church in United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*:

> [T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property.
>
> ...
>
> But First Amendment values are plainly jeopardized when church property litigation

> is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern ... . [T]he Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.
>
> 393 U.S. 440, 449, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969).

Historically, the United States Supreme Court has recognized three methods for resolving church property disputes. It is unnecessary to discuss all three, as Washington State has adopted the approach discussed in *Watson v. Jones*, 13 Wall. 679, 80 U.S. 679, 20 L. Ed. 666 (1871), commonly known as the "*Watson* compulsory deference rule." *Southside Tabernacle*, 32 Wash.App. at 820 n.2, 650 P.2d 231. Using the *Watson* rule, we must decide "whether or not the local church is subject to some higher governing authority." *Southside Tabernacle*, 32 Wash.App. at 818, 650 P.2d 231. If the local church is subject to some higher governing authority, then the church structure is described as "hierarchical." *Southside Tabernacle*, 32 Wash.App. at 818, 650 P.2d 231. More specifically, a "hierarchical church" is defined

as a "general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization." *Watson*, 80 U.S. at 722-23, 13 Wall. 679.

The second church organizational structure that *Watson* identified is a "congregational" structure. A "congregational structure" is defined as "a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority." *Watson*, 80 U.S. at 722, 13 Wall. 679. As noted in *Southside Tabernacle*, "[m]ost large [P]rotestant denominations and the Roman Catholic Church have been found to be hierarchical," while courts treat most Baptist churches as congregational. 32 Wash.App. at 818-19, 650 P.2d 231.

Whether a church is congregational or hierarchical is important because it mandates what type of analysis a trial court will undertake when reviewing the church dispute. Where there is a determination that the church fits the congregational model, the trial court should enforce the property decisions made "either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government." *Watson*, 80 U.S. at 724, 13 Wall. 679. The approach taken toward a hierarchically structured church is different. In a hierarchical setting, civil courts defer to the decision rendered by the highest church

judicatory to which the question/dispute was presented.[16] *Watson*, 80 U.S. at 727, 13 Wall. 679.

Here, the trial court's finding of fact determining whether New Hope CRC was hierarchical or congregational is somewhat equivocal. The finding states that "[t]here was testimony that [the church] is a blend, and that is probably true, but [the church] is clearly more congregational." CP at 138. What follows that statement is an explanation by the trial court that the congregation had to follow "certain rules or concepts" in order to affiliate with the CRCNA. CP at 138. The trial court continues by pointing out that the "congregation, church council, elders, deacons and pastor of New Hope CRC were bound to follow the rulings of the Classis" on ecclesiastical matters. CP at 138. Essentially, the trial court labels New Hope CRC as "congregational" but then immediately describes several characteristics of New Hope CRC that are more in keeping with "hierarchical" churches.[17]

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16. Courts in other jurisdictions have approved of other approaches to property disputes in a hierarchical setting. *See Jones v. Wolf*, 443 U.S. 595, 603, 99 S. Ct. 3020, 61 L.Ed.2d 775 (1979) (approving Georgia's application of the "neutral principles of law" approach and determining that the *First Amendment* does not specifically dictate that a State follow a particular method of resolving church property disputes). The Washington Supreme Court has disavowed the approach taken in *Jones v. Wolf* and exclusively adopted the deference approach. *Presbytery of Seattle, Inc.*, 79 Wash.2d at 373, 485 P.2d 615.

17. The trial court did not make an oral ruling: "I'm not going to, obviously, give you a decision from the bench after a 10-day trial and 100-and-some-plus exhibits ... ." Report of Proceedings (Nov. 30, 2007) at 1253.

The trial court's conclusions of law, however, are unequivocal: they treat the church dispute as if the church is hierarchical. The trial court's conclusions of law explain that because deference is owed to the Classis on ecclesiastical matters, the church is obligated to accept its rulings on matters of "who is in the congregation of the New Hope CRC,[18] and what authority Sung had as a Pastor Emeritus," thus deciding the issue of who has the right to the property's title. CP at 139. The trial court continues, "The Court must defer to the rulings of the church on ecclesiastical matters, which include church governance. As noted, affiliated churches have to follow these same rules of governance." CP at 139.

Sung urges us to consider the trial court's "congregational" finding in isolation while ignoring the important explanation and analysis that follow. Sung asks us to "agree" with the trial court, find New Hope CRC to be congregational, and remand this matter for analysis under "neutral principals of law." Appellant's Br. at 3.

We decline to do so. Where findings are equivocal, we interpret them in a manner that " 'sustains the judgment, rather than [in a manner] which would defeat it.' " *Smith v. Shannon*, 100 Wn.2d 26, 35, 666 P.2d 351 (1983) (quoting *Shockley v. Travelers Ins. Co.*, 17 Wash.2d 736, 743, 137 P.2d 117 (1943)). In context, the

18. Sung agreed with this in his deposition, stating that the Classis decides who may become a CRCNA member.

trial court's description of the church as "clearly more congregational" pertains to the way New Hope CRC conducted itself over the years. CP at 138. The language that follows clarifies the court's findings that New Hope CRC was bound by the rules of the CRCNA, a hierarchical church organization. The trial court's word choice was inartful,[19] but its intent was clear: New Hope CRC is hierarchical and thus, the Classis's decisions on matters presented to it are properly accorded deference. Because substantial evidence supports the finding that New Hope is hierarchical, we affirm the trial court's decision that the parties are bound by the Classis's decisions and that the rightful owner of the Tacoma property is the New Hope Christian Reformed Church of Tacoma. We also affirm all other parts of the trial court's order, including defendants' liability for back rent and revenues, and dismissal of Sung's counterclaims with prejudice.

III. Attorney Fees

Attorney fees may be awarded to a party under RCW 4.28.328 where the party prevails on a motion to cancel the lis pendens, or where the party prevails in defense of the action in which a lis pendens was filed unless substantial justification existed for filing the lis pendens.

19. It is worth noting that the findings of fact and conclusions of law were derived from the trial court's January letter of decision. It is possible that the conversational tone from the original letter simply does not translate to formal findings and conclusions.

Since Sung does not prevail in this action, he is not entitled to fees.

We affirm.

Van Deren, C.J., and Bridgewater, J., concur.

APPENDIX B — FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY FILED IN OPEN COURT MARCH 31, 2008

IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

HONORABLE BRUCE W. COHOE

FILED IN OPEN COURT
MARCH 31, 2008

Tae Y. Choi, InMin Kim, and Myung Soon Hilton, as representatives of the New Hope Christian Reformed Church of Tacoma, f/k/a New Hope Christian Reformed Church, and Reverend Timothy Toeset, as representative of the Classis Pacific Northwest of the Christian Reformed Church of North America,

Plaintiffs,

v.

Samuel Y. Sung and Young Hee Sung, as husband and wife; Morning Star World Mission,

Defendants.

Case No.: 06-2-07278-8

Appendix B

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for trial on November 13, 2007 and concluded on November 30, 2007. The Court heard ten days of testimony and argument. The Court has reviewed and considered over 100 exhibits, as well as deposition testimony submitted by the parties. Having done so, the Court makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Reverend Samuel Sung became a minister in the Christian Reformed Church of North America (CRCNA) in 1985. He founded the Hope Christian Reformed Church (Hope CRC) in Seattle near the same time. In 1991, the Hope CRC church became officially recognized as a member of the CRCNA and the Classis Pacific Northwest, a regional association of CRCNA churches in Western Washington and Alaska. The church maintained its membership and affiliation with CRCNA until the present dispute arose.

2. The Hope CRC church originally owned a property in SeaTac. It sold that property and purchased a property in Tacoma, which is the property in dispute here, in 1999. When it moved to Tacoma, the church changed its name to the "New Hope Christian Reformed Church."

3. Reverend Sung toiled for many years in his ministry. His family toiled at his side. Even his children

contributed their earnings to support the family and the church. The church membership was never very large, and as near as I can tell from the testimony, it did not provide a great deal of income for Reverend Sung and his family. The church did, however, manage to acquire a church building that has considerable value and only a small debt.

4. During the entire period that Reverend Sung headed his church he seldom maintained its corporate status, kept corporate minutes or corporate records of any nature. It was incorporated as needed for transactions, but then dissolved for failure to file appropriate reports. The "Hope Christian Reformed Church," UBI No. 23-705-023, was originally incorporated in 1986, and then dissolved in 1994. A second "Hope Christian Reformed Church" entity, UBI No. 601-811-132, was formed in 1997 by Mr. Sung, who evidently intended to reinstate the original corporate entity. That entity then changed its name to "New Hope Christian Reformed Church" in 1999, but was dissolved in 2000.

5. Reverend Sung also never really followed the CRCNA rules of governance. CRCNA rules, which are set forth in a book known as the "Church Order," generally provide for governance by a church council composed of the Senior Pastor, church elders, and church deacons. Reverend Sung, however, generally ran the church as he saw fit, sometimes with and sometimes without a church council. This was done without any evil or ill intent. In many ways it was a matter of having a

significant language barrier. The decisions made were largely not harmful to the general church function. Reverend Sung was simply a fairly strong-minded individual doing as he saw best without regard to CRCNA rules or state requirements.

6. As he neared retirement, Reverend Sung began to seek someone to replace him. He didn't follow normal church procedure within the CRCNA to do so. Instead, he simply on his own entered into an agreement with Reverend B. Kim, a minister in the Presbyterian Church (U.S.A.) ("PCUSA") to merge their two churches and allow Rev. Kim to become of the minister of the New Hope Church. At the time of the merger, Rev. Sung's church consisted of his family members and the members of two or three other families, whereas Reverend Kim's church had approximately 40 to 50 members.

7. Although Reverend Kim's church had been affiliated with the PCUSA, which is a different denomination from CRCNA, testimony showed that Presbyterian and Christian Reformed Churches share common historical roots, and are fairly similar in terms of doctrine and governance.

8. Rev. Sung and Rev. Kim entered into a written agreement in October of 2002. The agreement was essentially drafted by Reverend Sung and is in Korean. Translators do not agree on its exact wording but in essence it provides:

a. Reverend B. Kim was to take over as Senior Pastor of the New Hope Church;

b. Reverend B. Kim was to become a CRCNA pastor;

c. Reverend Sung was to be paid $60,000 and the new congregation was to assume $40,000 in debt which included a $25,000 mortgage on the Tacoma property, and a $15,000 dept to the Classis; and

d. There was to be a retirement ceremony for Reverend Sung.

Several additional paragraphs were dedicated to religious obligations of the parties, which are not particularly relevant here.

9. The $60,000 was paid, in cash, and Reverend B. Kim took over as agreed. There was a large retirement ceremony for Reverend Sung as agreed in April 2003, and he was later officially retired by the CRCNA and given a pension. His status in the CRCNA was thus changed to "Pastor Emeritus," which was required for him to get his pension from the CRCNA. He no longer could be considered a "Senior Pastor" under the CRCNA rules of governance.

10. Following the merger, new church council members were elected, which included Plaintiffs Choi, Kim, and Hilton. Plaintiffs Kim and Hilton had joined the church in 2002 with Reverend Kim's congregation. Plaintiff Choi joined the church in September 2003 resulting in part from his prior relationship with Rev.

Kim. Reverend B. Kim served for about two years, but he never officially became a CRCNA pastor and then went elsewhere. This left the church without a Senior Pastor, and various pastors of various denominations were invited by the church council to conduct services on a weekly basis in the interim.

11. Reverend Sung, who was still attending on an irregular basis, came back and indicated he would now be the Senior Pastor. The church council rejected Reverend Sung coming back as pastor, and asked the Korean Council (a council of ministers and elders of Korean CRCNA churches within the Classis) and later, the Classis Pacific Northwest to call for a new pastor in accordance with CRCNA rules.

12. Reverend Sung considered all of the people who joined the church during or after the merger, which included the existing church council and most of the existing church members other than Reverend Sung's family, to no longer be members of the New Hope CRC congregation and may have never considered them members. He informed them they could no longer hold services and locked them out of the church.

13. Meantime, Reverend Sung set up a new entity called "New Hope Christian Reformed Church," UBI No. 602-450-843, and another entity called "Morning Star World Mission," UBI No. 602-468-976. Without any real evidence of elections as council members or approval by an elected church council, Reverend Sung then executed a quitclaim deed to transfer the church

property from New Hope Christian Reformed Church to Morning Star World Mission. Morning Star World Mission, in turn, has since rented the property to another church for $1500 a month. A large portion of this money essentially goes to Reverend Sung in various ways for missionary trips and attorneys fees.

14. In the meantime the ousted congregation sought help from the Korean Council and subsequently the Classis Pacific Northwest. They began holding services at various homes and eventually rented a room in a church for 300 a month in March 2006 and had a new CRC minister, Reverend G. Kim, appointed to be pastor on an interim basis.

15. To be affiliated with the CRC, a church has to agree to certain rules or concepts. One of those is that the Classis or Synod resolve disputes concerning ecclesiastical matters, and that such rulings are binding on the local church unless they are shown to be contrary to the Word of God. The Classis, following church policy and rules of governance, had what is called the Classis Interim Committee, or CIC, investigate the dispute. Their conclusions are set out in Exhibits 48 and 49. Essentially they recognized the locked out group, headed by Elder Choi and now led by Reverend G. Kim, as the legitimate congregation and council. They further found Reverend Sung to be a Pastor Emeritus, having no power or function within the New Hope CRC, and directed that he return the church property to the congregation. There was no evidence presented that the Classis decision on these matters was contrary to the Word of God.

16. The CIC delayed imposition of its findings and called in a mediator from Los Angeles, Reverend T. Park, to attempt to reach an amicable resolution of the dispute between Reverend Sung and the church council. Reverend Park met with both groups without success. He then recommended the decision of the Classis be implemented. See Exhibit 50.

17. Reverend Sung refused to comply with the ruling of the Classis, and refused to return the church property. This lawsuit was then instituted to try to enforce the decision that the church property belonged to the congregation, and that Reverend Sung had wrongfully transferred the same. Meantime, Elder Choi moved to reinstate the church entity that had been dissolved in 2000 (UBI No. 601-811-132) under the name "New Hope Christian Reformed Church of Tacoma," identifying Plaintiffs Choi, Kim, and Hilton as directors. As it stands, there are two entities vying for rights to the property: Morning Star World Mission, which claims possession by way of the quitclaim deed executed by Reverend Sung and the "New Hope" entity he established (or re-established) in 2005; and Mr. Choi's "New Hope" entity, which asserts itself as a successor to the church entity that originally acquired the property.

18. The primary issue upon which both sides spent a large portion of the trial was whether the CRC is hierarchical or congregational. There was testimony that it is a blend, and that is probably true, but it is clearly more congregational. That, however, doesn't

resolve the issue. In order to be affiliated with the CRC a church has to agree to certain rules or concepts. One of those is the church will follow the rulings of the Classis or Synod on matters ecclesiastical unless the rulings are contrary to the word of God. Thus, the congregation, church council, elders, deacons and pastor of New Hope CRC were bound to follow the rulings of the Classis on the issue of who is the congregation of the New Hope CRC and what authority Reverend Sung had as a Pastor Emeritus. Those rulings were clearly ecclesiastical. They were not about ownership of property, but about who were members of this church.

19. The parties also dispute the effect and enforceability of the October 2002 agreement (paragraph 8 above), in light of Reverend B. Kim's failure to become an ordained CRC minister and his departure from the church in 2004. Reverend Sung argues that Reverend Kim's actions constitute a material breach of the agreement, and justified rescission of the contract and return of the property to Reverend Sung. The Court concludes that Reverend Kim's actions were not a material breach justifying rescission, in light of the fact that the church council agreed and sought to replace Reverend Kim with a new CRC minister with the assistance of the Classis, in accordance with CRC procedures. Further, the Court concludes that Reverend Sung waived his right to rescission, by retaining the $60,000 payment and other benefits of the agreement. Further any failures to pay the debts assumed were not a material breach, no demand or obligation existed from or to the creditor during the period in question.

20. No matter which way this matter is decided, one inescapable conclusion is that the tragedy of this case lies in the inability of the parties to mediate or somehow resolve their differences. The result is that the Court is placed in the position of making an all or nothing decision.

20.5. Elder Choi legally reinstated the nonprofit corporate status of the Church entity that had been dissolved in 2000 (UBI No. 601-811-132) under the name "New Hope Christian Reformed Church of Tacoma" in June of 2005.

II. CONCLUSIONS OF LAW

21. The Court heard mounds of evidence touching on all of the various theories of the parties. Most of that evidence has turned out to be irrelevant to my decision. I am not going to discuss most of the theories or evidence except as previously noted because they are irrelevant or become moot based on my conclusions.

22. The Court concludes that questions concerning membership and governance of the church are ecclesiastical matters, subject to resolution by the Classis under CRCNA rules. Indeed, the Reformation, which gave birth to the CRCNA, was largely about governance. Thus, the congregation, church council, elders, deacons and pastor of New Hope CRC were bound to follow the rulings of the Classis on the issue of who is the congregation of the New Hope CRC, and what authority Reverend Sung had as a Pastor Emeritus. Those rulings were clearly ecclesiastical. They were not

about ownership of property, but about who were members of this church. There has been no evidence that these rulings are contrary to the word of God. There has been evidence, both pro and con, that this lawsuit violates the word of God. That, however, has nothing to do with whether the Classis rulings as to who the congregation may be are contrary to the word of God.

23. The discussion above invokes what is often referred to as the deference rule. The Court must defer to the rulings of the church on ecclesiastical matters, which include church governance. As noted, affiliated churches have to follow these same rules of governance.

24. The defendants have argued that the plaintiffs do not have standing to pursue legal action to enforce the decision of the Classis. The Court is satisfied that the analysis above confers standing on plaintiffs. How else does the Classis or congregation enforce these decisions? They must seek enforcement through non-ecclesiastical means, the courts. The Classis is not incorporated; it is a part of the CRCNA.

25. Thus, I am bound to accept the rulings of the Classis, regardless of what I may think about them. I do believe them to be correct, but that is of no consequence. What then follows from those conclusions? What follows is in the area the Court does have authority.

26. The defendants also make several arguments based upon nonprofit corporation law. One problem with

those arguments is that if they were to prevail, I would be allowing Reverend Sung to benefit from his own acts of misfeasance. He essentially allowed the dissolution of the corporation that Mr. Choi ultimately reinstated. He ran this church essentially as an unincorporated association most of the time. Any application of the nonprofit corporations act that would allow him to transfer title to the church would clearly be inequitable and not be just. Further, the New Hope CRC has been reinstated by Mr. Choi with the same UBI number as the old corporation. Reverend Sung's corporation that he established in 2005 was a new corporation and did not own the church. The church was owned by the congregation. The Classis has ruled that all of the congregation that was locked out are the New Hope CRC congregation and thus, I'm ruling, the rightful owners of the church. The church must be conveyed back to the congregation's nonprofit corporation and the congregation can deal with the current tenants.

27. This case really comes down to a simple question with a relatively simple answer. Does a retiring minister get to take the church property with him when he retires? Of course not, but that is essentially what Reverend Sung is asking me to rule.

28. Based on the foregoing findings and conclusions, the Court **grants** Plaintiffs' claims for declaratory relief establishing that New Hope Christian Reformed Church of Tacoma is the rightful owner of the subject property. The Court's ruling is based on the deference rule, as described above.

29. Defendants have argued that the deference rule does not apply in this case, and that the matter should be analyzed under "neutral principles of law." Insofar as neutral principles of law apply, I conclude that Reverend Sung was bound by the October 2002 agreement, and not justified in reclaiming possession of the property from the congregation. The Court does not resolve Plaintiffs' alternate theories of relief based on promissory estoppel and breach of fiduciary duty, on the grounds that those claims are moot.

30. Plaintiffs have also asserted a claim for trespass, and seek damages for Reverend Sung's and Morningstar's invasion of the property. In order to establish intentional trespass, a plaintiff must show (1) an invasion of property affecting an interest in exclusive possession; (2) an intentional act; (3) reasonable foreseeability that the act would disturb the plaintiff's possessory interest; and (4) actual and substantial damages. The evidence shows that Reverend Sung and Morningstar intentionally invaded the property, excluded the rightful owners, and that the congregation suffered damages as a result. The Court finds in favor of plaintiffs on the trespass claim, and will assess damages equivalent to the rents received by Reverend Sung and Morningstar, respectively, for use the property. Based on the evidence submitted (Ex. 89), Morningstar received rents in the amount of $27,500 through September 10, 2007. Damages will be assessed at $1500 per month from that point forward until judgment is entered and the property is returned.

31. Reverend Sung has pleaded counterclaims for conversion, intentional infliction of emotional distress, slander of title, declaratory relief, and interference with business relationship. Based on the conclusion that plaintiffs were entitled to possession of the property, none of these claims can be sustained, and they are dismissed. Reverend Sung had also asserted a claim for defamation, which was abandoned, and so it is dismissed as well.

III. ORDER

Based on the foregoing, the Court shall enter judgment as follows:

1. Defendants will promptly execute quitclaim deed transferring all interest in the property to the congregation's nonprofit corporate entity, New Hope Christian Reformed Church of Tacoma. If whoever claims to be in charge as a corporate officer of Morningstar Ministries is unwilling to reconvey the property, then I will appoint a special master to do so.

2. Pending reconveyance of the property, all rent and other payments, however designated, relating to the use of the property shall be paid to the New Hope Christian Reformed Church of Tacoma, for the ultimate benefit of the New Hope CRC congregation.

3. Morning Star will be liable to Plaintiffs for revenues generated from the property, in the amount $27,500 through September 10, 2007, and an additional $1,500 per month from September 10, 2007, through the date of judgment.

4. Defendants' counterclaims will be dismissed with prejudice.

5. Execution of the judgment with respect to repossession of the property may be stayed upon posting of a $50,000 bond.

DATED this 31 day of March, 2008.

_____

Bruce W. Cohoe
Judge Pro Tem

APPENDIX C — OPINION OF THE SUPREME COURT OF WASHINGTON DECIDED AND FILED JULY 7, 2010

SUPREME COURT OF WASHINGTON

No. 84284-1

TAE T. CHOI ET AL.,

Respondents,

v.

SUNG ET AL.,

Petitioners.

OPINION

Petition for review of a decision of the Court of Appeals, No. 37313-1-II, February 2, 2010, *154 Wn. App. 303. Denied* July 7, 2010.

No. 10-561

In The
Supreme Court of the United States

SAMUEL Y. SUNG and YOUNG HEE SUNG, as husband and wife; MORNING STAR WORLD MISSION,

Petitioners,

v.

TAE Y. CHOI, INMIN KIM, and MYUNG SOON HILTON, as representatives of the NEW HOPE CHRISTIAN REFORMED CHURCH OF TACOMA, f/k/a NEW HOPE CHRISTIAN REFORMED CHURCH, and REVEREND TIMOTHY TOESET, as representative of the CLASSIS PACIFIC NORTHWEST OF THE CHRISTIAN REFORMED CHURCH OF NORTH AMERICA,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Washington, Division 2

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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I. STATEMENT OF THE CASE

Petitioners' Statement of the Case contains many assertions that are exaggerated, disputed, or simply not supported by the record below. Respondents refer this Court to the Opinion of the Court of Appeals of the State of Washington (Petitioners' App. A) and the trial court's Findings of Fact and Conclusions of Law (Petitioners' App. B), and for a statement of the facts that were resolved below.

In brief: This case arose from a dispute between the elected leadership of a church, as represented by Respondents, and a retired former minister of the church, Petitioner Samuel Sung. In the midst of the dispute, Sung declared that the church leaders were illegitimate, seized control of the church property, and locked out the congregation. (Petitioners' App. B, ¶¶ 11-12). In accordance with church rules, the congregation and its leaders appealed to the denominational authorities – the Classis Pacific Northwest (the "Classis") of the Christian Reformed Church of North America ("CRCNA") – to resolve the dispute. (*Id.*, ¶¶ 14-15). Classis investigated and concluded that Respondents represented the church leadership, and that Sung had no authority over church property. (*Id.*, ¶ 15). When Sung still refused to cede control of the property, this litigation followed. (*Id.*, ¶ 17).

The trial court's resolution of the matter was based on two essential findings: (1) the church was at all relevant times a member of the CRCNA, and bound by church rules; and (2) under church rules,

the Classis was authorized to resolve a dispute concerning the legitimacy of church leadership. (*Id.*, ¶¶ 1, 15, 22-25).

The trial court viewed the Classis' resolution of the matter – that the Respondents were legitimate leaders of the church – as correct. (*Id.*, ¶ 25). But in any case, the court recognized that questions concerning the credentials and legitimacy of church leaders were questions for the church, and not the courts, and thus the Classis' resolution should be upheld under the "deference rule" as applied in Washington. (*Id.*, ¶¶ 22-25).

The trial court further concluded that even if the deference rule did not apply, and the court were to follow the alternate "neutral principles of law" approach advocated by Sung, the result would be the same. Sung had contracted to retire from the ministry and relinquish any position of authority in the church; the trial court concluded this agreement was binding on Sung, and equally justified the result under the "neutral principles" approach. (*Id.*, ¶ 19, 29).

A three-member panel of the Washington State Court of Appeals affirmed the trial court, and the Washington Supreme Court declined further review.

II. ARGUMENT

Sung attempts to frame this case as an opportunity for this Court to modify well-settled first

amendment principles and formally abandon the "compulsory deference" rule first set out in *Watson v. Jones*, 80 U.S. 679 (1871). This case presents an exceptionally poor vehicle to consider these arguments.

First, application of the deference rule in this case did not require the lower courts to "entangle" themselves in religious questions. The courts recognized that under the church's own rules of governance, the Classis was empowered to resolve questions regarding the legitimacy of church leadership. By deferring to the Classis' resolution of these issues, the courts *avoided* the need to resolve the essentially ecclesiastical arguments advanced by Sung – whether certain individuals were or were not "legitimate" or qualified to hold positions in the church in accordance with church rules.

Sung seizes on the fact that church rules, as recited by the trial court, allowed that Classis' decision would not be binding if it were shown to be "contrary to the word of God." (*Id.*, ¶ 18). But the question of whether a church decision is contrary to the word of God is properly a matter for further resolution and appeal within the church; there is no indication that the decisions below were based on the courts' own attempted resolution of such questions.

Second, any argument that the lower courts should have followed the "neutral principles" approach is moot in this case, given the trial court's conclusion that the result would be the same under

either test. (*Id.*, ¶ 19, 29). In fact, there is no available legal doctrine that would justify the result Petitioners seek. As the trial court concluded:

> This case really comes down to a simple question with a simple answer: Does a retiring church minister get to take church property with him when he retires? Of course not, but that is essentially what Reverend Sung is asking me to rule.

Any review of the constitutional issues discussed in Petitioners' brief should be based on a more compelling set of facts, and a more thorough treatment of questions that actually mattered in the courts below.

III. CONCLUSION

Respondents respectfully request that the Court deny this Petition.

Dated this 29th day of November, 2010.

Respectfully submitted,

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